



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0118]

RIN 1625-AA00

Safety Zone; Columbia River, Sand Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Columbia River within a 500-yard radius of the small boat “Nessy” while in the area of Sand Island, near Chinook, WA, during Double-Crested Cormorant removal operations being conducted by the U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services. This rule prohibits all persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River (COTP), or a designated representative. We invite your comments on this rulemaking.

DATES: This rule is effective from April 3, 2017, through May 25, 2017. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0118 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further

instructions on submitting comments. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0118 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Laura Springer, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port Sector Columbia River

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Double-Crested Cormorant removal operations are scheduled to begin on April 3, 2017 and there is not sufficient time to publish an NPRM and take comments prior to the safety zone being needed to help ensure the safety of waterways users. The

Coast Guard received the specific dates that the removal operations will take place on February 27, 2017.

The Coast Guard is soliciting public comments on this temporary interim rule. Although we need to make this interim rule effective starting April 3, 2017, we will consider public comments and may issue a temporary final rule that will supersede this interim rule based on your comment.

III. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this temporary interim rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is

published.

IV. Legal Authority and Need for Rule

The U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services notified the Coast Guard that they intend to conduct removal operations of Double-Crested Cormorant in the area of Sand Island on the Columbia River, near Chinook, WA, on the following dates from 7 a.m. to 3 p.m. each day: April 3-6, April 10-13, April 17-20, April 24-27, May 1-4, May 8-11, May 15-18, and May 22-25, 2017. These operations will involve the use of firearms and live ammunition from the small boat “Nessy.” The COTP has determined that the operations pose a potential safety hazard for anyone within a 500-yard radius of “Nessy” due to the live gunfire, unpredictable animal behavior, and the highly dynamic marine environment in that area, which is characterized by strong tides, river currents, and wind. As such, the safety zone is needed to help ensure the safety of all waterways users in the area. The safety zone is proposed under the authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

V. Discussion of the Rule

The COTP establishes a 500-yard safety zone around the small boat “Nessy” on April 3-6, April 10-13, April 17-20, April 24-27, May 1-4, May 8-11, May 15-18, and May 22-25, 2017 from 7 a.m. to 3 p.m. while it is operating in the area encompassed by these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W. Additional and/or changes to the dates (within the effective period of this rule) and times that the safety zone will be enforced may be necessary due to weather conditions and/or other variables and will be communicated to the public via Broadcast Notice to Mariners and on-scene notification. The safety zone is intended to

protect persons and vessels from the potential safety hazards associated with Double-Breasted Cormorant removal operations being conducted by the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services from “Nessy” and will do so by prohibiting all persons and vessels from entering the safety zone without permission from the COTP or a designated representative. “Nessy” is described as a 20-foot black and gray aluminum work skiff with an overhead light arch.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the limited size, location, duration, and time-of-day that the safety zone will be in effect and the fact that vessel traffic would be able to safely transit around the safety zone. In addition, mariners may request permission from the COTP to enter the zone if necessary.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal

agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section VI.A above this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-0118 to read as follows:

§ 165.T13-0118 Safety Zone; Columbia River, Sand Island, WA.

(a) *Location.* The following area is a safety zone: all waters of the Columbia River within 500 yards of the small boat “Nessy ” while in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W. “Nessy” is a 20-foot black and gray aluminum work skiff with an overhead light arch.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. Where immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by members of the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services and other federal, state, or local agencies in enforcing this section.

(d) *Enforcement periods.* This section is effective from April 3, 2017 through May 25, 2017. It will be enforced from 7 a.m. to 3 p.m. each day on the follow dates: April 3 through 6, April 10 through 13, April 17 through 20, April 24 through 27, May 1 through 4, May 8 through 11, May 15 through 18, and May 22 through 25, 2017. The Coast Guard will inform mariners of any additions and/or changes to the dates and times this section is enforced during its effective period via Broadcast Notice to Mariners and on-scene notification.

D. F. Berliner,

Captain, U.S. Coast Guard,

Acting Captain of the Port, Sector Columbia River.

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